* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **CRL. REV. P. NO. 942 of 2006**

Reserved on : July 16, 2007
Date of Decision : August 3, 2007

N. BHOJARAJA SHETTY … PETITIONER
Through Mr. V. Sudeer, Advocate

Vs.

C.B.I. … RESPONDENTS
Through Mr. R.M. Tiwari for CBI

CORAM:
Mr.Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

MR. JUSTICE S. RAVINDRA BHAT

1. The present revision petition is preferred against the orders of the Special Judge, charging the petitioner for offences punishable under Section 120-B I.P.C. read with Section 420/467/468/471 and Section 5(1)(d) and 5(2) of the Prevention of Corruption Act, 1947 and Section 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988.

2. The brief facts necessary to decide this present petition are that M/s R.K.

Bhandari (Homepath) Private Limited was maintaining a current account with Vijaya Bank, R.K. Puram. Later on the name of the said company was changed to M/s R.K.B. Herbals Private Limited(accused no.5, hereafter "A-5"). The case of the prosecution is that while opening this account, M/s Vijaya Bank, R.K. Puram, New Delhi, enquired with Indian Overseas Bank, Daryaganj, Delhi which, by letter dated 13.03.1982 informed the former that there was no objection if current account of the said company was opened by them provided no credit facilities were extended to it. A-5 submitted a loan application to M/s Vijaya Bank, R.K. Puram, New Delhi on 2.02.1987 for obtaining credit facilities to the tune of Rs 204 lakhs. It was alleged that the Petitioner was the Branch Manager at the R.K. Puram, New Delhi Branch of Vijaya Bank at the relevant time. The loan proposal was favourably recommended and forwarded by him to the Divisional office in Delhi on 20.02.1987. However, the proposal was deferred by the then Divisional Manager, Delhi, on account of the company not obtaining opinion of previous lender(OPL) i.e. M/s Indian Overseas Bank, Daryaganj, Delhi and also because of an earlier default by Deepak Bhandari, Director of the company in repayment of loan facility availed earlier from M/s Vijaya Bank. The prosecution alleged that the petitioner willfully, dishonestly and fraudulently did not obtain the OPL from M/s Indian Overseas Bank, Daryaganj, Delhi.

3. The prosecution further alleged that M/s R.K.B. Herbals Limited again

submitted a loan application dt. 24.10.1987 through its Managing Director R.K. Bhandari(since deceased) seeking cash credit limit of Rs. 50 lakhs and bill purchase limit of Rs 50 lakhs, thus totaling Rs. 1 crore. In the loan application, the accused persons willfully and dishonestly concealed material facts of having obtained working capital facilities from M/s Indian Overseas Bank, Daryaganj, Delhi. The specific allegations against the petitioner were that he prepared the advance proposal as well as credit report dated 25.10.1987 in which he wilfully, fraudulently and dishonestly concealed the fact of M/s R.K.B. Herbals Limited having obtained credit facilities from M/s Indian Overseas Bank, Daryaganj, Delhi and sent the report to the Zonal office of M/s Vijaya Bank, recommending sanction of credit facilities applied for by the accused. The petitioner allegedly knew that M/s R.K.B. Herbals Limited had availed credit facilities from M/s Indian Overseas Bank, Daryaganj, Delhi, since he had processed an earlier loan application dated 02.02.1987. On 27.10.1987, the Executive Director allowed working Capital to M/s R.K.B. Herbals Limited, on an ad-hoc basis, to the extent of Rs 20 lakhs by way of OLCC and to the extent of Rs. 45 lakhs for Demand bill purchase(DBP Limit) subject to canvassing of deposits of Rs 2 crores.

4. The prosecution further alleged that the petitioner issued letter dated 20.11.1987 to M/s R.K.B. Herbals Limited intimating *ad hoc* release of credit facilities without stipulating any terms and conditions. He released the amounts

on 24.11.1987 and 08.01.1988 to M/s R.K.B. Herbals Ltd. On the basis of a letter dated 29.04.1988, the Divisional Manager, due to his representations recommended sanction of limit of M/s R.K.B. Herbals Limited to the AGM. On 09.05.1988 the regular sanction of the limit of Rs 50 lakhs each under OLCC and DBP was granted to M/s R.K.B. Herbals Limited by the Chairman of M/s Vijaya Bank.

5. The loan became overdue; further credit was given, to retrieve the advances. However, the borrower defaulted. The prosecution alleged, in the charge sheet that there were over 19 instances between 17.12.1987 to 30.06.1989 when the petitioner allowed withdrawals from the OLCC account for amounts varying between Rupees four lakhs to Rs. 25 lakhs, that were much beyond the sanction limit and drawing powers in gross violation of instructions of the bank, without even informing, or obtaining approval from, higher authorities. While operating documentary bills purchase account, the petitioner purchased 130 documentary bills for the period from 08.01.1988 to 01.12.1988 to the tune of Rs. 154.80 lakhs, out of which only 62 bills amounting to Rs. 75.04 lakhs were realized and remaining 68 bills valuing Rs 79.76 lakhs were returned unpaid. Further, he petitioner furnished incorrect and misleading information to the Delhi Divisional Office of M/s Vijaya Bank regarding realization of discounted documentary bills on the basis of which the latter was induced to make favourable

recommendations for regular sanction of credit facilities to M/s R.K.B. Herbals Ltd. Further, despite specific instructions from the Divisional Manager of M/s Vijaya Bank not to purchase further bills until overdue bills were realized, the petitioner continued to purchase documentary bills of M/s R.K.B. Herbals Limited. It was alleged that the petitioner failed to regulate the end-use of funds and caused undue favour to M/s R.K.B. Herbals Limited by allowing them heavy cash withdrawals on over 110 occasions from the OLCC account.

6. The prosecution further stated in the charge sheet, that on one occasion, a sum of Rs. 2.61 lakhs was released by the petitioner at the instance of M/s R.K.B. Herbals Limited to M/s All India General Freight Carriers as advance freight by debiting OLCC account of the firm for re-booking of goods when in fact there was actual re-booking of goods.

7. Mr. Sudheer, learned counsel argued the allegation of availing of credit facility by M/s R.K.B. Herbals Limited with its Directors from Indian Overseas Bank, Darya Ganj, Delhi, was not a misconduct under Section 13, of the Prevention of Corruption Act, as it was within the knowledge of the then Divisional Manager Sh. A.B.S. Shetty, a named accused in the FIR which is reflected from the statement of the Public Witness. Learned counsel further urged that petitioner's role was limited to releasing the loan directed by the higher authorities, as it was sanctioned by the Executive Director/ Chairman & Managing

Director on the recommendations of the Divisional Head.

8. Counsel further contended that the petitioner had the stock of M/s R.K.B. Herbals Limited verified, before forwarding the loan proposal. Counsel urged that the bills of M/s R.K.B. Herbals Ltd. were purchased by other officers and not the petitioner, which is reflected from the fact that they are signed by other officers as well. Learned counsel further argued that the loan application dated 20.02.1987 of the Company was for the Homeopath Division and herbal division for Rs. 2 crores of which the proposal was deferred by the Bank. The later proposal submitted by the company on 24.10.1987 was for a completely separate unit to be set up in Himachal Pradesh, for which no prior credit facility had been availed from any bank including Indian Overseas Bank.

9. Learned counsel for the petitioner urged that the FIR leading to the framing of impugned charges was filed as the Recovery Suit against the Company did not yield results. He contended that the petitioner was needlessly implicated, to present a scapegoat. It was also submitted that during the course of the investigation, the CBI had twice searched and raided the petitioner's residential premises. On both occasions, no incriminating evidence were found. The Petitioner had not secured any unlawful advantage for himself; thus, no offence under Section 5(i)(d) of the Prevention of Corruption Act,1947 or Section 13(1)(d) of the Prevention of Corruption Act, 1988 was made out.

10. Counsel for the petitioner next urged that the entire transaction is purely of civil nature and no element of criminality was involved. In the light of the compromise arrived at between the Bank and the Company before the Debt Recovery Tribunal wherein the Company has paid a sum of Rs. 1,30,00,000/- towards full and final settlement and the Bank issued a "NO DUE CERTIFICATE" to the company, no useful purpose would be served in framing charges. Reliance was placed on the decision reported as *Naresh Chandra & Anr. v CBI* (Cr. MC 945/2002 decided on 18-9-2003 by this court) and *K. Prabhakar Hegde v State & Ors.* (Cr. MC. 4486/2003, decided on 27-4-2005, by this court). It was lastly urged that this court was in WP(C)No.1326/2003, after considering all the facts and circumstances including the fact that other co-accused/borrowers had settled with the bank, directed the latter to release retirement benefits and other payments due to the petitioner, after his superannuation. In these circumstances, it would not be appropriate to ask him to stand trial.

11. The materials on record, mentioned in the charge-sheet reveal that

(1) The proposal and credit report by the petitioner (D-4 and D-5) did not mention about the previous credit facilities of A-5;

(2) The petitioner informed on 22.04.88 (D-16) that eleven bills were purchased from January to March, 1988, but none was returned unpaid, which was allegedly false and misleading. This led to regular sanction of

facilities.

(3) According to the statement of accused (D-142) the petitioner permitted overdrawings to accused Nos. 2 to 5 on several occasions.

(4) The petitioner produced various bills drawn by A-2, as Director of A-5 of which 34 were received back unpaid, as per the register of bills D-139. This resulted in wrongful loss to the Vijaya Bank.

(5) The petitioner permitted cash withdrawals totalling of over Rs.55 lakhs 110 times.

(6) 57 drawee bills amounting to Rs. 43.45 lakhs, were outstanding due to the non-retirement of bills by A-5. These were discounted by the petitioner.

12. The arguments made on behalf of the petitioner that he did not conceal any fact nor did he misrepresent the true facts a fresh proposal was made by M/s RKB Herbals Pvt. Ltd. and that eventually the loan was sanctioned by the higher authorities, in my opinion is simplistic. When the original proposal was made, there was a disclosure that the company was engaged in manufacture of homeopathic medicines. However, the proposal did not materialise. The later proposal was silent as regards the outstandings of the company. The plea that the herbal unit was different, at this stage, cannot be countenanced, because both the homeopathic and herbal unit were floated by the same corporate entity. At the

relevant time it owed substantial monies to the Indian Overseas Bank besides the Himachal Pradesh Financial Corporation and Himachal Pradesh State Industries Development Corporation. That part, the manner in which the facilities were permitted to be operated and the facts presented to the higher authorities were such that co-accused A-2 to A-5, could avail of credit facilities which were subsequently enhanced.

13. According to the charge sheet the petitioner accepted several lorry receipts, in these transactions which were not IBA approved transporters. These lorry receipts were accepted in violation of the terms of sanction; only 5 bills for Rs. 4.1 lakhs (out of a total 38.77 lakhs) were realised. The remaining were returned unpaid. The allegations against the petitioner further are that he continued to purchase documentary bills of M/s RKP Herbals Pvt. Ltd. despite specific instructions to the contrary and that no such purchasers should be made plea overdue bills were released. The allegation is also the petitioner failed to regulate the end use of funds to the tune of Rs. 55.93 lakhs.

14. As regards the order for release of retiral benefit of the petitioner, I am of the opinion that this aspect is irrelevant. Like the settlement between the borrower/accused and the bank, that is extraneous factor as far as the alleged commission of the offences are concerned. The Supreme Court held that such

settlement of civil disputes should not influence the court seized of criminal proceedings, in the judgment reported as *Inspector of Police, CBI Vs. Rajagopal* JT 2002 (2) SC 331.

15. I have carefully examined the submissions of the parties. The contention that the petitioner cannot be made scapegoat for the sanction of the loan which turned sticky in my opinion wears thin. This is because the proposal that was eventually cleared by the headquarter was premised on recommendations made by him. In those the actual track record of the borrowers had not been revealed. Even if the argument that after review of all credit facilities, the headquarter nevertheless proceeded to sanction higher amounts for the movement they accepted the conduct of the petitioner in discounting 57 drawee bills for the same 43.45 lakhs during 1989-90 which remained outstanding as a result of non-retirement of the bills, shows his serious involvement. In fact there are materials to show that right from the inception the petitioner had been, despite instructions extending facilities. He even wrote letters to the higher authorities confirming that no bills had been returned unpaid, on account of documentary bills, whereas there was material to the contrary. The court cannot undertake a meticulous and detailed scrutiny of the material,or the exercise would run the danger of a pre-trial examination of the case on merits; an action cautioned against by the Supreme

Court in *State of MP-vs-S.B. Johari* 2000-(106)-CRLJ -0944 -SC, in the following terms:

> *"In our view the aforesaid exercise of appreciating the materials*
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> *produced by the prosecution at the stage of framing of the charge is wholly unjustified. The entire approach of the High Court appears to be as if the Court was deciding the case as to whether accused are guilty or not. It was done without considering the allegations of conspiracy relating to the charge under S. 120-B. In most of the cases, it is only from the available circumstantial evidence an inference of conspiracy is to be drawn. Further, the High Court failed to consider that medicines are normally sold at a fixed price and in any set of circumstances, it was for the prosecution to lead."*

16. On an overall conspectus of all the facts I am of the view that the opinion formed by the special Judge which led to the impugned order and charges being framed against the petitioner, cannot be characterized as illegal or contrary to the materials on record. It cannot be said, at this stage, that the conduct and involvement of the petitioner would not amount to grave suspicion of his having committed the offences charged with. At the stage of framing charges the court has to, on the broad probabilities, drawn from the materials made available to it, infer whether *prima facie* grave suspicion exists about the involvement of the concerned accused. Such evidence sifting exercise should not be meticulous and detailed. The trial court therefore did not commit any error of law warranting exercise of jurisdiction.

17. For the above reasons, this petition has to fail. The petition is accordingly

dismissed.

August 3, 2007 **(S.RAVINDRA BHAT)**
JUDGE